



Amador County Recorder
Sheldon D. Johnson

DOC- 2007-0009931-00

REQD BY STATE OF CALIFORNIA

Tuesday, SEP 11, 2007 11:59:35

Ttl Pd \$0.00

Nbr-0000154192

SDJ/R1/1-21

RECORDING REQUESTED BY:

Frederick W. Petersen
P.O. Box 1128
Pine Grove, California 95665

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826
Attention: James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup
Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(RE: County of Amador, Restriction on Compacted Cell under Frederick Road Portion
of Lot 35 of Petersen Ranch Phase 2; Site Code 101703)

This Covenant and Agreement ("Covenant") is made by and between Frederick W. Petersen (the "Covenantor"), the current owner of the lot situated near Pine Grove, County of Amador, State of California, which contains the property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health, safety, or the environment as a result of the

presence on the land of hazardous materials as defined in Health and Safety Code (H&SC) section 25260. The Covenantor and the Department, collectively referred to as the "Parties," hereby agree that the use of the Property be restricted as set forth in this Covenant, and the Parties further agree that the Covenant shall conform with the requirements of California Code of Regulations, title 22, section 67391.1.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.13 acre, is more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is a portion of Frederick Drive, County of Amador, State of California and extends slightly into the County of Amador's right of way adjacent to Lot 35 of Petersen Ranch Phase 2, as shown on the Subdivision Map for Petersen Ranch, Phase 2, which the parties expect will be recorded in 2006. The Property is located within a much larger area now generally bounded by Climax Road, State Highway 88, Ponderosa Way and Ridge Road, in an unincorporated area of the County of Amador southwest of the community of Pine Grove. This larger area was formerly described as Amador County Assessor's Parcel Number (APN) 038-010-134, but in 2006 is to be newly subdivided pursuant to the Subdivision Map for Petersen Ranch, Phase 2.

1.02. The vertical and lateral dimensions of the Property are more particularly described and depicted in Exhibit "B", attached hereto and incorporated herein by this reference. The Property is the location where hazardous substances above levels suitable for unrestricted use were consolidated and encapsulated beneath a portion of the roadbed for Frederick Drive, beginning at 500 feet and extending to 700 feet west of the center of the intersection of Frederick Drive and Petersen Ranch Drive ("Compacted Cell"). The Compacted Cell is covered with eight (8) to 14 feet of compacted native fill on top, with approximately 12 feet of compacted native fill on the slope face, and then capped by asphalt.

1.03. The mine tailings pile resulted from mining activities at the former Petersen Mine between 1930 and 1948 and contained elevated levels of lead in some samples. The Preliminary Endangerment Assessment (PEA) prepared for the Petersen Mine Tailings Pile, dated October 27, 2005, recommended that the tailings pile be removed, and identified its use as roadway sub-base to be an acceptable option. A Covenant is required because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including lead, remain in the soil within the Compacted Cell.

1.04. As detailed in the PEA, the Property contained lead, a hazardous substance as defined above, at a concentration of 140 to 270 parts per million ("ppm"). Based on the PEA, the Department concluded that unrestricted use of the Property resulting in human exposures by a residence, hospital, school for persons under the age of 21 or children's day care center would entail an unacceptable cancer risk. The mine tailings pile was moved, consolidated and compacted on the Property. Remediation consisted of excavating approximately 750 cubic yards of impacted soil and consolidating it into the Compacted Cell below the native fill. The Department has further concluded that the Property, as remediated and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Environmental Restrictions. "Environmental Restrictions" means all protective provisions, covenants, restrictions, prohibitions, and terms and conditions as set forth in any section of this Covenant.

2.03. Improvements. "Improvements" include, but are not limited to: buildings, structures, roads, driveways, improved parking areas, wells, pipelines or other utility installations.

2.04. Lease. "Lease" means lease, rental agreement or any other document that creates a right to use or occupy any portion of the Property.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered or conveyed. This Covenant: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to the H&SC, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor or sublessor shall give the buyer, lessee or sublessee written notice of the existence of this Covenant and its Environmental Restrictions.

3.04. Incorporation into Deeds and Leases. This Covenant and its Environmental Restrictions shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.05. Conveyance of Property. The Owner, or his or her designee, shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, leases and other non-possessory encumbrances). The written notice shall include the name and mailing address of the new owner of the Property and shall reference the site name and site code as listed on page one of this Covenant. The notice shall also include the APN noted on page one. If the new owner's property has been assigned a different APN, each such APN that covers the Property must be provided. The Department shall not, by reason of this Covenant, have authority to approve, disapprove or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order or by a specific provision of this Covenant.

3.06 Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for himself and for all subsequent Owners that, pursuant to Title 22 California Code of Regulations section 67391.1(h), the Owner agrees to pay the Department's cost in administering the Covenant. To cover the routine review of annual inspection reports only, the Owner shall pay the Department a one-time payment of \$4000.00 prior to recording. This advance payment does not include DTSC inspection, incident response, enforcement, or other costs that the Department may incur beyond routine review of the annual inspection reports.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes.

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children or elder care facility.
- (e) No utilities, including but not limited to gas, electric, water, telephone, fiber optics, cable, sewer and storm drains, will be placed in the Compacted Cell. In addition, adjacent utilities will be placed at a distance so that installation, use or repair of those utilities will not jeopardize the integrity of the Compacted Cell.

4.02. Non-Interference with Compacted Cell. The Covenantor agrees to refrain from and prevent any activity that could interfere with the Compacted Cell present on the Property. The Covenantor specifically agrees that:

- (a) No activities that will disturb the Compacted Cell at eight (8) feet or below the ground surface (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) All uses and development of the Property shall preserve the integrity of the Compacted Cell.
- (c) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling on the Property shall be managed in accordance with all applicable provisions of state and federal law.

- (d) The Owner shall provide the Department written notice at least 14 days prior to any building, filling, grading, mining or excavating in the Property at eight (8) feet below the ground surface.

4.03. Prohibited Activities. The following activities shall not be conducted within the Compacted Cell on the Property:

- (a) Drilling for drinking water, oil or gas without prior written approval by the Department. The Department's costs associated with such review and activities are not covered by the one-time payment described in paragraph 3.06 above.
- (b) Excavation at or below eight (8) feet without the Department's prior approval of a Soil Management Plan. The Department's costs associated with such review and activities are not covered by the one-time payment described in paragraph 3.06 above.
- (c) Raising of food (e.g., food crops, edible berry bushes).

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to require modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submissions of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil or criminal actions.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Owner, or any other aggrieved person, may apply to the Department for a termination or modification of one or more terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Amador within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each

such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served; or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner:

Frederick W. Petersen
P.O. Box 1128
Pine Grove, California 95665

To Department:

James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
Site Mitigation and Brownfields Reuse Program
California Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, California 95826

Any party may change its address or the designated individual who should receive a Notice by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If this covenant or any of its terms are determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

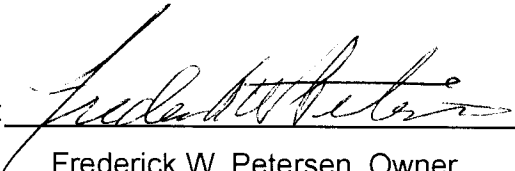
7.06 Statutory References. All statutory references include successor provisions.

7.07 Inspection and Annual Reporting Requirements. The Owner, or his or her designee, shall conduct an annual inspection of the Property and submit an annual report to the

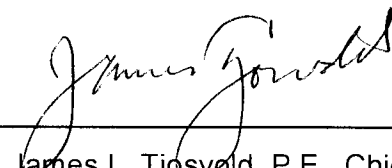
Covenant. The annual report must include the dates, times and names of those who conducted and reviewed the annual inspection report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the annual report (e.g., drive by, walk in, etc.). If violations are noted, the annual report must detail the steps taken to return to compliance. If the County of Amador Department of Public Works, identifies any violations of this Covenant during the annual inspections, or at any other time, the County of Amador Department of Public Works must within 10 days of identifying the violation: determine the identity of the party in violation, send a letter advising the party of the violation of this Covenant and demand that the violation cease immediately. Additionally, copies of any correspondence related to the enforcement of this Covenant shall be sent to the Department within ten (10) days of its original transmission.

IN WITNESS WHEREOF, the Parties execute this Covenant.

For the Covenantor:

By:  Date 8-27-07
Frederick W. Petersen, Owner

For the Department of Toxic Substances Control:

By:  Date 9/5/07
James L. Tjosvold, P.E., Chief
Northern California-Central Cleanup Operations Branch
Site Mitigation and Brownfields Reuse Program

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Amador

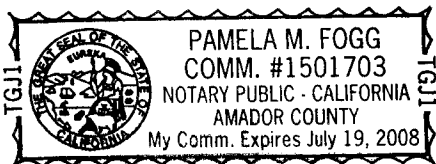
On 8-27-07 before me,

Pamela M. Fogg Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Frederick W. Peterson

Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal

[Signature]
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to restrict property, etc

Document Date: 8-27-07

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
☐ Title(s): _____
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
☐ Title(s): _____
☐ Partner - ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of Thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Sacramento

SS.

On

September 5, 2007

Date

before me,

Kathleen C. Duncan, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally

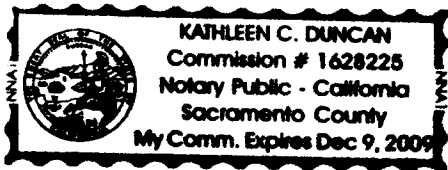
appeared

James L. Fosvold

Name(s) of Signer(s)

☒ personally known to me

☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Place Notary Seal Above

Kathleen C. Duncan

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

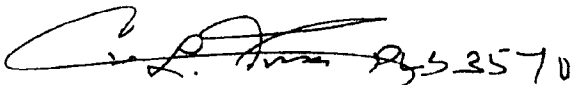
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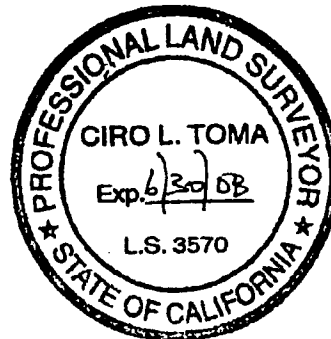
Exhibit A: Legal Description of the Property
(Portion of Land containing the Compacted Cell)

DESCRIPTION FOR PETERSEN RANCH
Area of Deposited Soils on Petersen Property, Pine Grove, CA.

An area of deposited soils lying within the Northeast 1/4 of Section 5, Township 6 North, Range 12, East, Mount Diablo Meridian, County of Amador, State of California said area being more particularly described as follows:

Beginning at a point from which the Northeast corner of the hereinabove referred to Section 5 bears North 48° 41' 46" East 1992.80 feet distant; thence, from said point of beginning, South 34° 39' 57" West 42.44 feet; thence, along the arc of a curve to the right, having a radius of 225.00 feet, through a central angle of 14° 07' 05", for an arc length of 55.44 feet; thence South 48° 47' 02" West 102.12 feet; thence, North 81° 08' 37" East 30.00 feet; thence North 33° 22' 09" East 183.06 feet; thence North 55° 20' 03" West 15.00 feet to the point of beginning, and containing 0.13 acre of land, more or less.


Ciro L. Toma PLS 3570 License expires 06/30/08



Within Lot 35 of Petersen Ranch Phase 2, as shown on the Subdivision Map for Petersen Ranch, Phase 2, filed for record on DECEMBER 15, 2006 in the Amador County Recorder's Office in Book 9 of Subdivision Maps, at Page 28, Records of Amador County.

Plat map showing land units (UNIT 1, UNIT 2, UNIT 3, UNIT 4) and lots (1-58). The map includes roads such as Mineral Ridge Drive, Mineral Ridge Court, Peterson Ranch Dr, Willow Drive, and State Highway 88. It also shows 'Future' roads and units, and 'Existing' roads. Boundary measurements are provided in feet and degrees. A north arrow is located in the upper right corner. The map is signed 'J. R. S. 10/20/08' in the lower right corner.

Exhibit B: Vertical and Lateral Dimensions and Location of
Compacted Cell (5 Pages total)

1106

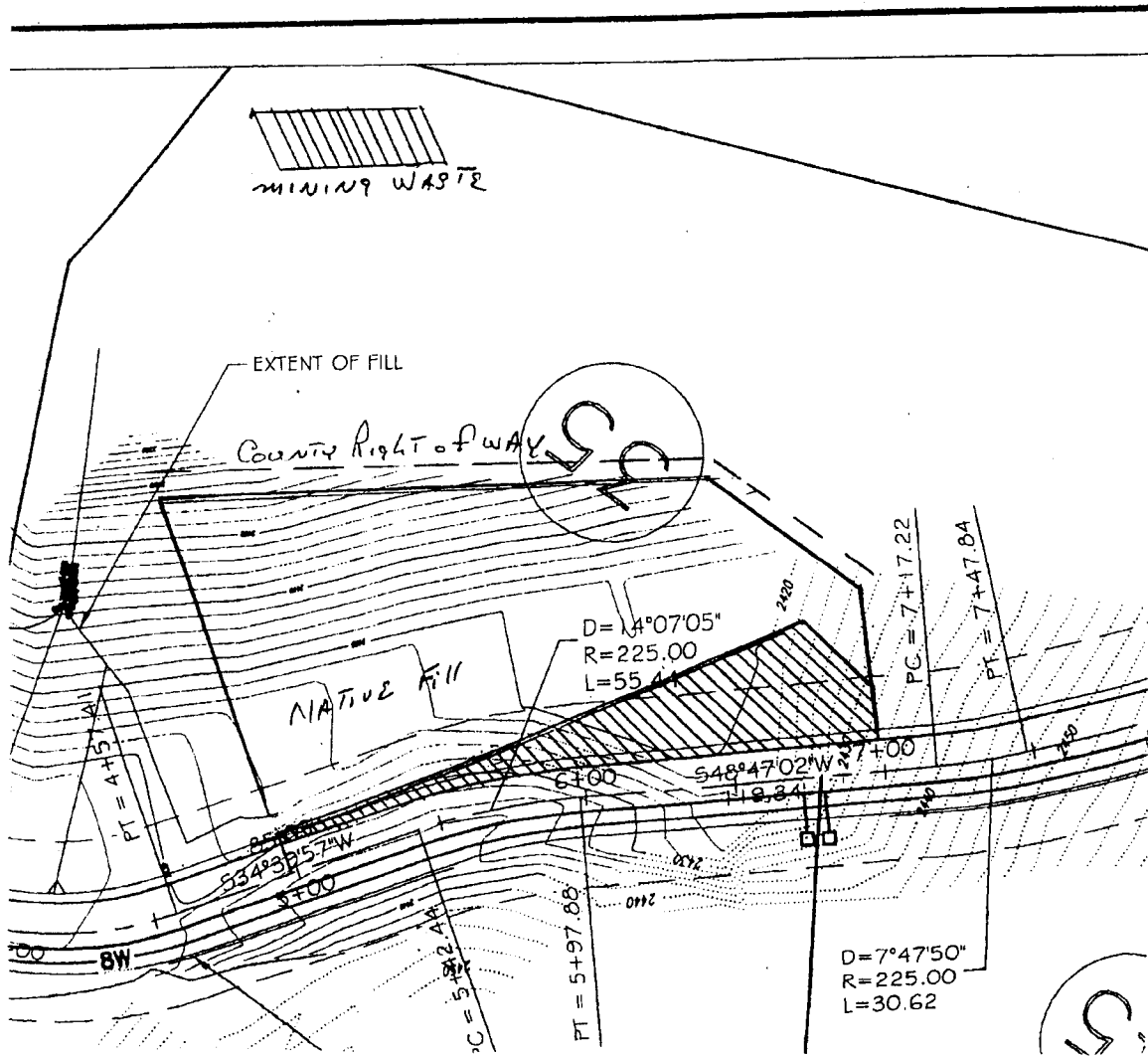


Exhibit B: Engineering map

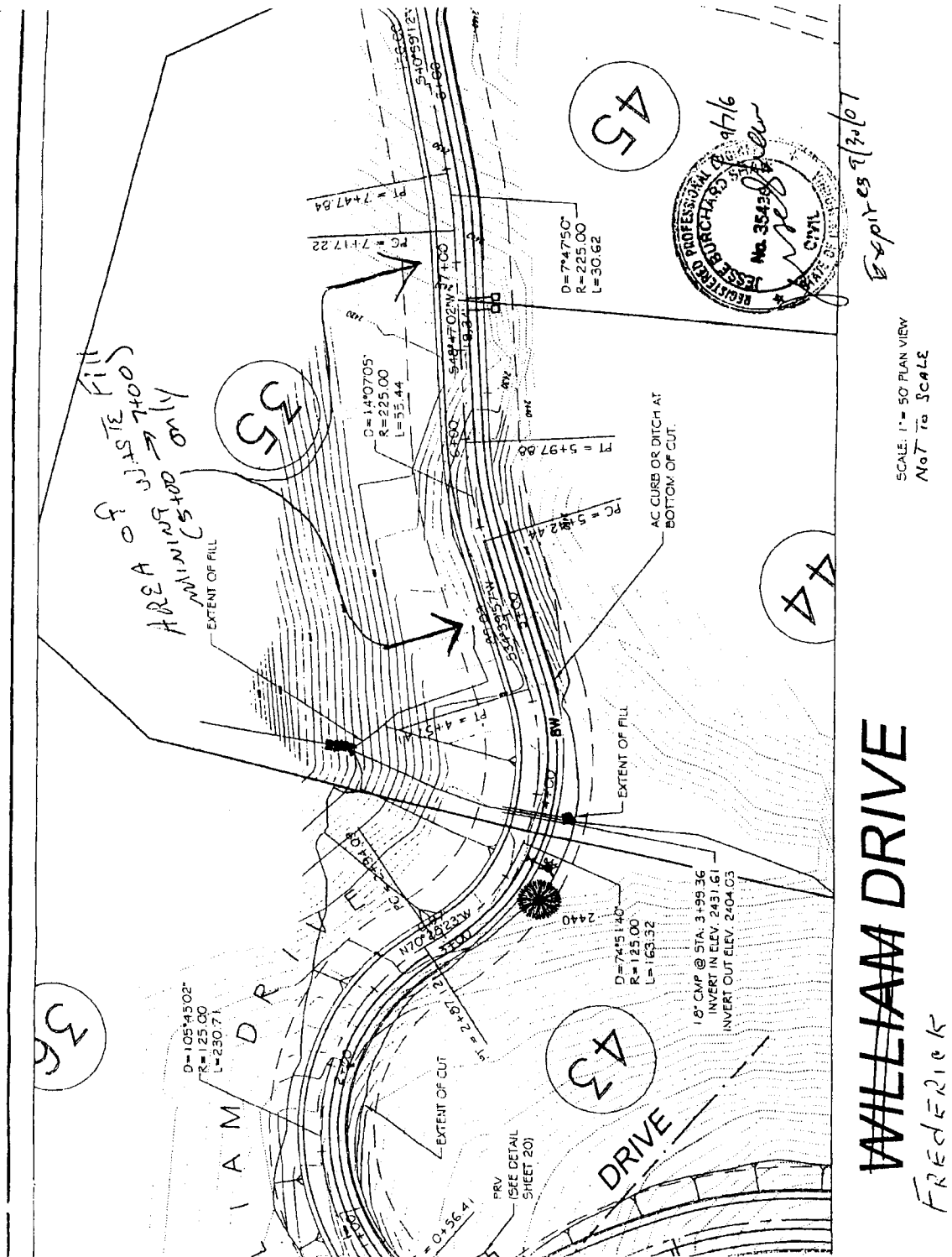


Exhibit B: Bird's eye view

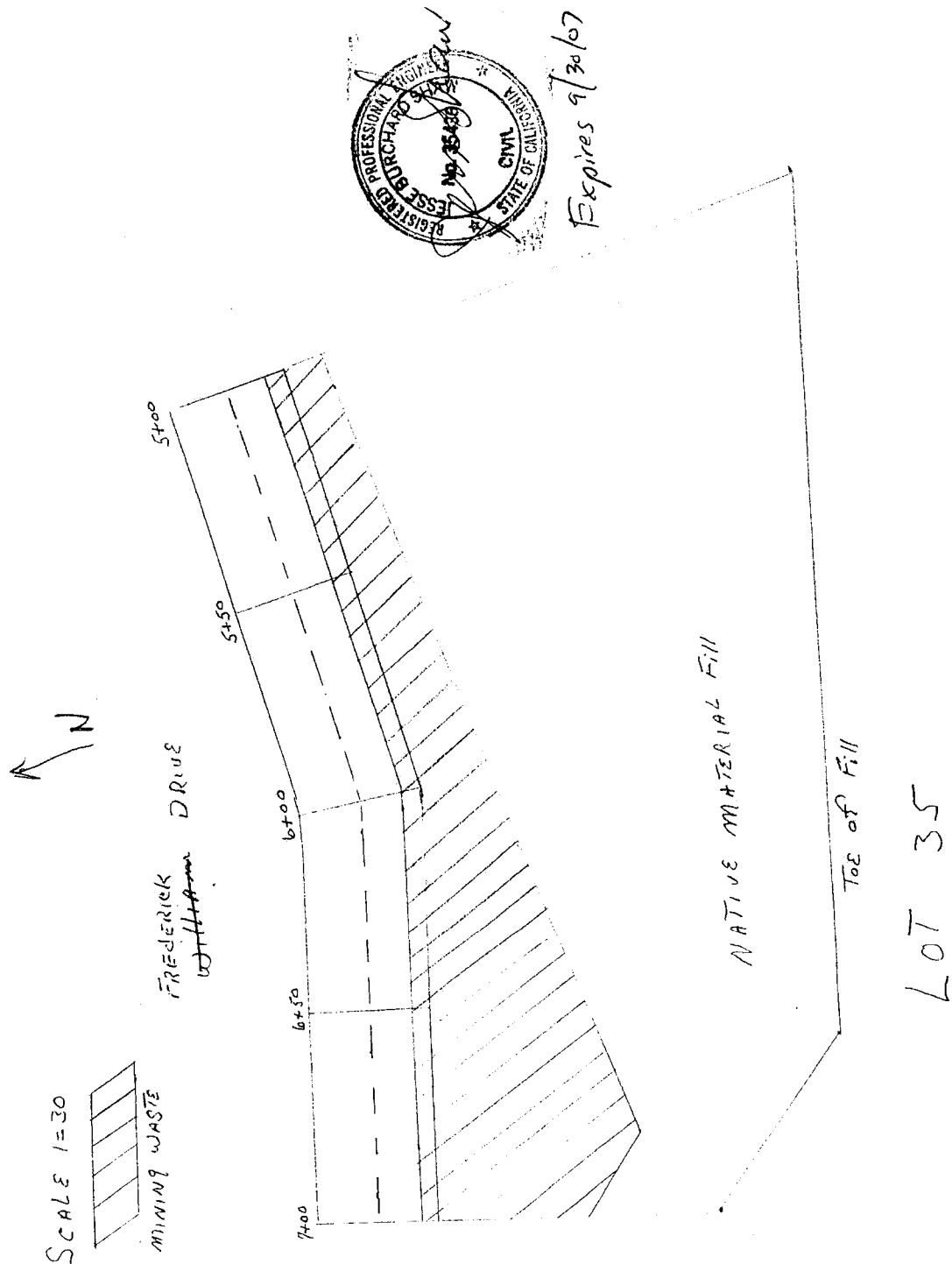
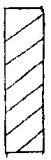
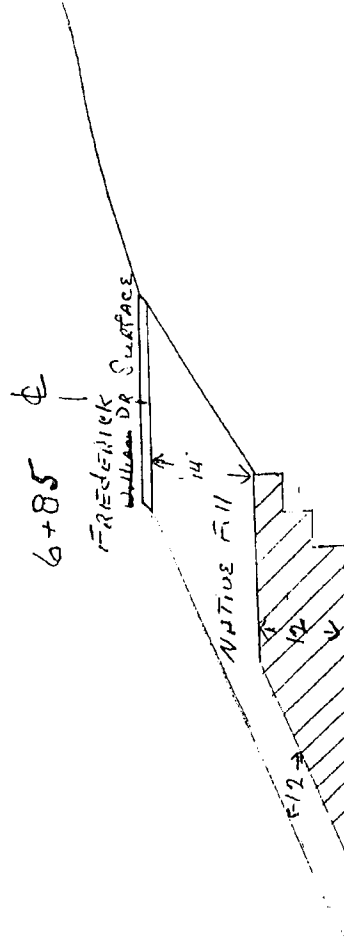


Exhibit B: Vertical Cross section of Frederick Drive
(Looking down center line)

SCALE 1" = 20'
MINING WASTE


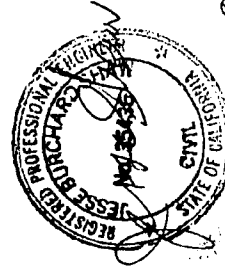
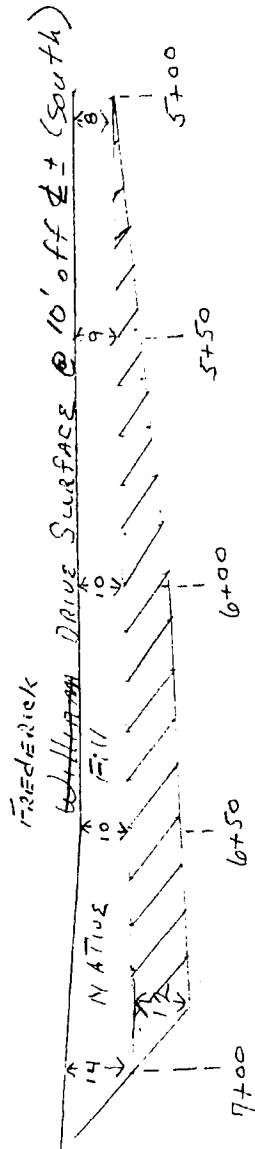



Expires 9/30/07

Exhibit B: Cross section from side of Frederick Drive

SCALE 1"=30'

MINING WASTE

9/30/07

EXP. 125

Exhibit C: Annual Inspection Report and Checklist (2 pages)
(See Section 7.07 of the Land Use Covenant for more details)

From: _____ (owner or occupant)

To: Department of Toxic Substances Control
Northern California Central Cleanup
Attn: Project Manager (101703)
8800 Cal Center Drive
Sacramento, CA 95826

Subject: _____ (Year) Annual Report for Covenant on "Property" which includes Compacted Cell approximately 8 feet below Frederick Road right of Way, Petersen Ranch Development, Amador County

The Occupant (landowner or physical occupant) submits this report to meet the annual report requirements in the Environmental Restriction (Covenant) for the Frederick Road "**Property**" (as defined in the Covenant) which includes the Compacted Cell in Pine Grove, California. This report is not a substitute for incident notification.

This report is due to the Department by January 15th of each Calendar year.

Inspection date: _____ Time: _____ Inspector Name (print): _____

Land Use inspected within the "Property" for this report (A check before any item below will indicate that there is no violation of the identified prohibited use or activity. Unchecked items will be interpreted as potential violations and should be described in detail below):

___ No residences, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.

___ No hospital for humans.

___ No public or private schools for persons under 21 years of age.

___ No Day Care Center for children or a senior center for seniors.

___ Activities that had the potential to disturb the contaminated soil or cell below the Road or cause instability of the slope or cap material (e.g. excavation, grading, soil, or plant removal, trenching, filling, earth movement or mining, or excessive watering) **have not** occurred or have been controlled and are less than 6 feet deep.

Note **any** disturbance or significant event that occurred in the reporting period. Include the date of event, notifications and outcome on page two.

___ No soils below the Road were brought to the surface by grading, excavation, trenching or backfilling or such soils were managed in accordance with all applicable provisions of local, state and federal law.

Note **any** such soil activity and subsequent management that occurred in the reporting period. Include the date of event, notifications and outcome on page two.

___ No raising of food

___ No Drilling for water, oil or gas.

___ No extraction of groundwater.

___ Uses or development of the "Property" during the reporting preserve the integrity and physical accessibility of the Compacted cell.

Note any change in condition of the Compacted cell and indicate if the change was reported to the County Public Works Office and to the Department's project manager within 24 hours of discovery (916) 255-3745.

Provide additional descriptions of any violations of the above restrictions, provide photos of any violations of restrictions, and attach copies of notifications, inspections notes, drawings, photographs, record of verbal warnings, or other notes. Add extra pages as needed.

The current Occupant(s) submit this annual report in compliance with the Covenant's terms, and hereby certify both that this annual report is true and correct and that the property is being used in a manner consistent with the terms of the Covenant under penalty of perjury.

Signature of Inspector

Date

Signature of Occupant's Authorized Representative of
Covenantor

Date

Print Name

Title

Affiliation
(e.g., Amador County Public Works)